

KRONENBERGER ROSENFELD, LLP

Karl S. Kronenberger (CA Bar No. 226112)

Jeffrey M. Rosenfeld (CA Bar No. 222187)

150 Post Street, Suite 520

San Francisco, CA 94108

Telephone: (415) 955-1155

Facsimile: (415) 955-1158

karl@KRInternetLaw.com

jeff@KRInternetLaw.com

Attorneys for Plaintiff Digby Adler Group LLC
dba Bandago

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**DIGBY ADLER GROUP LLC *dba*
BANDAGO,**

Plaintiff,

v.

IMAGE RENT A CAR, INC., *et al.*

Defendants.

Case No. 3:10-cv-00617-SC

**DECLARATION OF JEFFREY M.
ROSENFELD IN SUPPORT OF
PLAINTIFF'S REQUEST FOR CLERK
TO ENTER DEFAULT AGAINST
ALL DEFENDANTS**



1 I, Jeffrey M. Rosenfeld, declare as follows:

2 1. I am an attorney admitted to practice in the State of California and the
3 United States District Court for the Northern District of California. I am a partner with the
4 law firm of Kronenberger Rosenfeld, LLP, counsel of record for Plaintiff Digby Adler
5 Group LLC *dba* Bandago. Unless otherwise stated, I have personal knowledge of the
6 matters stated herein.

7 2. In February 2010, my office engaged One Legal, LLC to effect service of
8 process in this action on Defendants Image Rent A Car, Inc. ("Image") and Van Rental
9 Co., Inc. ("VRC").

10 3. In late February 2010, I was informed by One Legal, LLC ("One Legal")
11 that a licensed process server, Dominic DellaPorte, had effected service of process on
12 both Image and VRC by serving an officer or managing or general agent of both Image
13 and VRC, namely Connie Gray. Thereafter, One Legal provided my office with proofs of
14 service for Image and VRC, executed by Mr. DellaPorte. Attached hereto as **Exhibits A-**
15 **B** are true and correct copies of the proofs of service for Image and VRC.

16 4. On March 21, 2011, Plaintiff filed a First Amended Complaint ("FAC") in this
17 action. In the FAC, Plaintiff added new Defendants Gad Sebag ("Sebag") and Shneior
18 Zilberman ("Zilberman"). [D.E. No. 85.]

19 5. The Court issued summonses to Sebag and Zilberman on March 24, 2011
20 [D.E. Nos. 86-87.]

21 6. After the Court issued the summonses to Sebag and Zilberman, my
22 colleagues and I performed several hours of research to locate all places of business and
23 all residences for Sebag and Zilberman.

24 7. Among other things, we performed Accurint background searches on
25 Sebag and Zilberman. True and correct copies of redacted Accurint reports for Sebag
26 and Zilberman are attached hereto as **Exhibits C-D**, respectively.

27 8. We also performed other free and proprietary Internet searches on Sebag
28 and Zilberman, including Intellius people searches. We also reviewed Defendants' prior

1 court filings and declarations for evidence of Sebag and Zilberman's places of business
2 and residences.

3 9. Based on this research, I compiled a list of addresses that then served as
4 Sebag and Zilberman's places of business and residences. In the following paragraphs,
5 I describe the processes I used to identify these addresses.

6 10. **391 Empire Blvd., Brooklyn, NY**

- 7 • In Sebag's declaration, filed on May 10, 2010 [D.E. No. 22-4], Sebag
8 admitted under penalty of perjury that he was the Chief Executive
9 Officer of Image and VRC, and that both businesses had their principal
10 places of business at 391 Empire Blvd., Brooklyn, NY.
- 11 • In Zilberman's declaration, filed on June 3, 2010 [D.E. No. 32-1],
12 Zilberman admitted under penalty of perjury that he was the General
13 Manager of Image and had been an employee of Image since 2004.
- 14 • In Zilberman's letter to the Court, filed on March 12, 2010 [D.E. No. 10],
15 Zilberman signed the letter as the Vice President of Image and identified
16 Image's return address as 391 Empire Blvd., Brooklyn, NY.
- 17 • Image and VRC's bankruptcy petitions, filed with the United States
18 Bankruptcy Court for the Eastern District of New York on March 24,
19 2011, Case Nos. 11-42390-NHL and 11-42391-NHL, identify Image and
20 VRC's then current address as 391 Empire Blvd., Brooklyn, NY. True
21 and correct copies of Image and VRC's bankruptcy petitions are
22 attached hereto as **Exhibits E-F**, respectively.
- 23 • Sebag's and Zilberman's Accurant reports (Exhibits C-D) also identify
24 391 Empire Blvd., Brooklyn, NY as an active business address for both
25 Sebag and Zilberman.

26 11. **732 Lefferts Ave., Apt. 2B, Brooklyn, NY**

- 27 • Sebag's and Zilberman's Accurant reports (Exhibits A-B) identify a
28 residential address associated with both Sebag and Zilberman: 732



Lefferts Ave., Apt. 2B, Brooklyn, NY. The Accurint reports indicate that this apartment is owned by Sebag but is occupied by Zilberman.

- Sebag's ownership of 732 Lefferts Ave. is confirmed by the New York City Department of Finance, Office of the City Register. A printout of search results from this office's website, located at <http://a836-acris.nyc.gov/Scripts/Coverpage.dll/index>, is attached hereto as **Exhibit G**. Exhibit G shows that Sebag owns 732 Lefferts Ave.

12. **1449 Carroll St., Brooklyn, NY**

- Image's bankruptcy petition (Exhibit E) identifies another residential address for Sebag: 1449 Carroll St., Brooklyn, NY.
- Sebag's ownership of 1449 Carroll St. is confirmed by the New York City Department of Finance, Office of the City Register. A printout of search results from this office's website, located at <http://a836-acris.nyc.gov/Scripts/Coverpage.dll/index>, is attached hereto as **Exhibit H**. Exhibit H shows that Sebag owns 1449 Carroll St., Brooklyn, NY.

13. **719 Eastern Parkway, Brooklyn, NY**

- In response to a request under New York's Freedom of Information Law, the New York Secretary of State produced documents that identify an additional business addresses for Zilberman: 719 Eastern Parkway, Brooklyn, NY, in connection with the business Go Van Rentals Inc. Attached hereto as **Exhibit I** is a true and correct copy of the certificate of incorporation for Go Van Rentals Inc.
- Image's bankruptcy petition (Exhibit E) also identifies 719 Eastern Parkway as the address for one of Image's supposed creditors, Menachem Mendel Shneurson.
- Moreover, the registrant for all of Image's and VRC's domain names at the time of service was Group Travel Solutions, Inc., which is also located at 719 Eastern Parkway. Attached hereto as **Exhibit J** is a true

1 and correct copy of the certificate of incorporation for Group Travel
2 Solutions, Inc.

3 14. On March 24, 2011, my firm engaged 24 Hour Process Servers, Inc. ("24
4 Hour Process Servers") to serve Sebag and Zilberman with the summons and complaint
5 packet for this action.

6 15. My firm instructed 24 Hour Process Servers to use diligent efforts to serve
7 Sebag and Zilberman, and to make multiple attempts at service at the following
8 addresses:

- 9 • 391 Empire Blvd., Brooklyn, NY
- 10 • 732 Lefferts Ave., Apt. 2B, Brooklyn, NY
- 11 • 1449 Carroll St., Brooklyn, NY
- 12 • 719 Eastern Parkway, Brooklyn, NY

13 16. In April 2011, I was informed by 24 Hour Process Servers that a licensed
14 process server, Richard Paul, had effected personal service of process on Sebag.
15 Attached hereto as **Exhibit K** is a true and correct copy of the proof of service for Sebag,
16 executed by Mr. Paul.

17 17. In April 2011, my office was in frequent communication with 24 Hour
18 Process Servers about efforts to serve Zilberman. 24 Hour Process Servers informed
19 me that while its process server, Richard Paul, had made multiple service attempts on
20 Zilberman, it appeared that Zilberman was avoiding service. In particular, Mr. Paul tried
21 to effect service on multiple occasions at the two business locations and two residences
22 associated with Zilberman and identified above. 24 Hour Process Servers further
23 informed me that after Mr. Paul had made these multiple service attempts, he affixed
24 copies of the summons, FAC, and other initiating documents to the front door of
25 Zilberman's businesses and residences. 24 Hour Process Servers further informed me
26 that thereafter, Mr. Paul sent the summons, FAC, and other case-initiating documents to
27 Zilberman's last known residential and business addresses by first class mail in an
28 envelope bearing the legend "Personal and Confidential." Attached hereto as **Exhibit L** is



1 a true and correct copy of the proof of service for Zilberman, executed by Richard Paul.

2 18. As a result of all of these efforts, Zilberman learned that he had been
3 named as an individual defendant in this action, and he admitted the same in a
4 deposition in the adversary proceeding entitled *Messer v. Zilberman, et al.*, Chapter 7
5 Case No. 11-42930-NHL, Adversary Proceeding No. 12-01288 (Bankr. S.D.N.Y.) True
6 and correct excerpts from the October 7, 2013 deposition transcript of Zilberman taken in
7 connection with this adversary proceeding are attached hereto as **Exhibit M**. In the
8 attached deposition passage, Zilberman testified under penalty of perjury:

9 Q. Were you sued individually in that California action [the above-
10 referenced action]?

11 A. Yes, I am.

12 Q. Did you have counsel in that action?

13 A. I used to.

14 Q. What counsel?

15 A. Levi Huebner (phonetic).

16 19. On June 16, 2014, the Court lifted a stay that had gone into place when
17 Image and VRC filed petitions for bankruptcy protection. [D.E. No. 97.]

18 20. On June 18, 2014, I wrote to counsel of record, notifying them that no
19 Defendant had responded to the FAC, and that unless Defendants responded, Plaintiff
20 would be forced to seek entry of default. Attached hereto as **Exhibit N** is a true and
21 correct copy of this email.

22 21. On June 20, 2014, I received an email from a new attorney, Joel Rothman,
23 purporting to represent all of the Defendants in this matter. Through subsequent emails
24 and telephone communications, I explained to Mr. Rothman and Defendants' counsel of
25 record, that if Defendants did not respond to the FAC by July 1, 2014, Plaintiff would
26 seek default.

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22. As of July 23, 2014, no Defendant has responded to the FAC.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Declaration was executed on July 23, 2014, in San Francisco, California.

s/ Jeffrey M. Rosenfeld

Jeffrey M. Rosenfeld